

Disposition of the Independent Review Panel

Complainant: Dwayne Harris
Aggrieved: Jose Hernandez

Date: August 1, 2003

IRP Case: A2002.369

From: Eduardo I. Diaz, Ph.D.
Executive Director

The Independent Review Panel met on July 24, 2003 for the purpose of publicly reviewing the complaint made by Dwayne Harris (Deaf Advocate of Deaf Access Communications), on the behalf of Jose Hernandez, against the Miami-Dade Police Department (MDPD) and the department's response to that complaint. The following represents the findings of the Panel:

A. Allegations

Mr. Hernandez alleges that:

1. Detectives Kenneth Potts and Gilberto Morales communicated with him in writing and refused to provide a deaf interpreter after he made several requests for one.
2. Detectives Potts and Morales smirked and laughed at him while towing his van.
3. Detective Potts towed his van without justification.

B. Disposition of the Independent Review Panel

1. There was insufficient evidence to support the three allegations made by Mr. Hernandez, based on the following:

Regarding Allegation #1 - The testimony of both Mr. Hernandez and Ms. Medina conflicted with that of Detectives Potts and Morales. The complainant and his girlfriend said that he (Hernandez) requested an interpreter at least twice. The detectives said they asked Mr. Hernandez if he wanted an interpreter and he refused one.

Regarding Allegation #2 - The detectives denied laughing or smirking at Mr. Hernandez. Ms. Medina said the detectives "smiled at Mr. Hernandez." Although Mr. & Mrs. Lopez indicated that they did not see the officers smirk or laugh, it is unclear whether they saw and/or were present during the entire exchange between the detectives and Mr. Hernandez.

Regarding Allegation #3 - It appears that the detectives had just cause to tow the van. There's sufficient evidence to show that the determination to tow the vehicle was predicated on the vehicle description and recorded license tag number provided by the robbery victim. Although Mr. Hernandez said that his van was inoperable and therefore could not have been involved, Mr. Lopez refuted that assertion. Additionally, the wrecker service driver drove the van onto the flatbed of the tow truck.

2. The evidence reviewed by the Panel revealed a thorough, well documented Robbery investigation. No evidence was found of inappropriate interaction with Mr. Hernandez.

The complaint was concluded on July 24, 2003.

Independent Review Panel

Staff Recommendation to the Panel

July 24, 2003

Complaint: A2002.369

Complainant: Dwayne Harris, Deaf Advocate, Deaf Access Communications

Aggrieved: Jose Hernandez

Accused Party: Miami-Dade Police Department (MDPD), Detectives Kenneth Potts and Gilberto Morales.

Date Complaint Received: October 4, 2002

Materials Reviewed: Grievance Report Form, Correspondence, Staff Notes, and Departmental Response.

Complaint: Mr. Harris filed a complaint on behalf of Jose Hernandez. According to Jose Hernandez, on the evening of September 28, 2002, he was approached by Miami-Dade Police Department (MDPD) Detectives Kenneth Potts and Gilberto Morales in front of Zoila Medina's (his girlfriend's) residence, located at 3661 East 6 Avenue, Hialeah. Since he is hearing impaired, the Detectives attempted to communicate with him by writing messages on paper. Mr. Hernandez indicated to the detectives that he could not understand the detectives' questions, and requested a sign language interpreter several times in order to fully understand them. Both Detectives refused his requests, and laughed at him and Ms. Medina, who is also deaf.

Mr. Hernandez said the detectives responded by informing him that his Chevrolet Astro Van would be towed because the vehicle matched the description of a van used in a robbery. Mr. Hernandez informed the officers that the van had not been moved in two weeks due to a broken radiator. According to Mr. Hernandez, the detectives had the vehicle removed from the scene anyway, without notifying him when or where he could pick up the vehicle. A uniformed sergeant and four additional units from the City of Hialeah Police Department arrived on the scene approximately 30 minutes later, but were not present during the exchange between Mr. Hernandez and the detectives.

Mr. Hernandez alleges that:

1. Detectives Potts and Morales communicated with him in writing and refused to provide a deaf interpreter after he made several requests for one.
2. Detectives Potts and Morales smirked and laughed at him while towing his van.
3. Detective Potts towed his van without justification.

Departmental Response – MDPD Investigative Reports PC 2002-0375: MDPD found allegations 1 and 2 to be not sustained. Allegation 3 was exonerated. Internal Affairs Sergeant James Barrett's investigative report included statements from Ms. Medina, as well as her landlords, Telma and Roberto Lopez, who were also present at the scene.

- Zoila Medina stated that both detectives communicated with Mr. Hernandez by writing on paper. Although she did not see what was written on the paper, she could tell that Mr. Hernandez could not fully understand what the detectives were asking him. After twice requesting an interpreter via paper, the detectives smiled at Mr. Hernandez and denied his requests.
- Telma Lopez related that she observed the plainclothes detectives approach her husband, Robert Lopez. A few minutes later, the detectives were standing next to Mr. Hernandez. She did not see them communicating. She did not see the detective laugh at Mr. Hernandez. She stated that she communicated regularly with Ms. Medina and Mr. Hernandez by writing in English.
- Roberto Lopez related that he approached the two detectives while they were standing behind Mr. Hernandez' van, which was parked in front of his residence. They introduced themselves and informed him that they were conducting a robbery investigation. Mr. Lopez said one of the detectives asked him how he communicates with Mr. Hernandez, and he replied, "with a pen and paper." Mr. Lopez stood about 35 feet away from the detectives and Mr. Hernandez, and observed them communicating in writing. He did not observe the detectives laugh at Mr. Hernandez, but had left during part of their exchange.
- Detectives Kenneth Potts and Gilberto Morales: Det. Potts stated that he was conducting an investigation regarding a robbery that occurred on 9/27/02. The victim of the robbery obtained the tag number of the subject vehicle, and after completing a records check, it revealed the vehicle to be registered to Mr. Hernandez. The following evening, he and Detective Morales responded to the address of Ms. Medina, where the van was located. Mr. Hernandez and Ms. Medina were outside. After establishing that Mr. Hernandez was deaf and could not speak, communication was established with him by writing on a note pad. He was asked in writing, if he wanted an interpreter, and if he preferred English or Spanish. He

replied that he could read and write English and declined an interpreter. Det. Potts conveyed that there was a robbery in which his van was used. Mr. Hernandez wrote that his van was inoperable and hasn't been driven in over a week. He denied them access to the van. Detective Potts explained that he would then have to tow the van and obtain a search warrant. Mr. Hernandez appeared upset. The detectives requested a tow truck and a uniform police officer from City of Hialeah Police Department. The detectives denied laughing or smirking, or seeing each other do the same. Det. Potts said he told Mr. Hernandez which tow yard his van would be towed to, and discarded the paper on which he and Mr. Hernandez wrote.

Additional Information:

- According to the Offense Incident Report written on 9/28/02, the driver for Downtown Towing asked Mr. Hernandez for the ignition key and Mr. Hernandez replied that there was none and that the van was inoperable. The tow truck driver started the van and drove it onto the flatbed of the tow truck. While the truck was being towed, Mr. Lopez verified that Mr. Hernandez had been driving the van for the past three days.
- On 10/5/02, the search warrant was executed and, at the conclusion of processing the interior of the van for DNA evidence, Det. Potts released the hold on the van.
- Mr. Hernandez' complaint was initially referred to the Robbery Bureau by the Office of American Disabilities Act (ADA) Coordination. The results of the command staff investigation were documented in a memorandum which MDPD Director Carlos Alvarez sent to ADA Director Daniel Holder on 11/21/02. A copy was also sent to Mr. Hernandez.

Staff Remarks: On 5/22/03, Internal Affairs' official investigative report was sent to IRP. Panel staff forwarded the report to Dwayne Harris (of Deaf Access Communication, Inc.) who filed the complaint with IRP, on behalf of Mr. Hernandez, and to Mr. Hernandez with a letter asking him to advise Panel staff whether or not he wished to pursue his complaint. There has been no response.

Panel staff contacted the Office of ADA and spoke with Claudia Rojas, ADA Coordination Specialist. Ms. Rojas stated that Deaf Access Communication, Inc., is no longer in operation. She advised that a copy of the memorandum written by the MDPD Director was forwarded to Mr. Hernandez, but he never responded. ADA closed the case.

Staff Findings Regarding the Allegations:

- A. Staff did not find sufficient evidence to support the three allegations made by Mr. Hernandez, based on the following:

Regarding Allegation #1 - The testimony of both Mr. Hernandez and Ms. Medina conflicted with that of Detectives Potts and Morales. The complainant and his girlfriend said that he (Hernandez) requested an interpreter at least twice. The detectives said they asked Mr. Hernandez if he wanted an interpreter and he refused one.

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- B. The evidence reviewed by Panel staff revealed a thorough, well documented Robbery investigation. No evidence was found of inappropriate interaction with Mr. Hernandez.

Staff Recommendations: Panel staff recommends that the Panel accept the staff findings and conclude the complaint, due to the lack of response from Dwayne Harris and Jose Hernandez, as well as insufficient evidence to support the allegations made by Mr. Hernandez.